

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

INGE T ANDERSON,

Plaintiff,

V.

UNITED STATES OF AMERICA, *et al.*,

### Defendants.

NO. C17-0891RSL

## ORDER REGARDING AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

This matter comes before the Court on “Plaintiff’s Motion for Partial Judgment on the Pleadings Regarding Defendant’s Affirmative Defenses and Counterclaims.” Dkt. # 41. Plaintiff filed this action against her ex-husband alleging breach of an I-864 immigration contract and various tort claims. Defendant asserts twenty-five affirmative defenses<sup>1</sup> and six counterclaims. Dkt. # 34. Plaintiff seeks dismissal of the defenses and counterclaims on the ground that they fail on the merits.

As a preliminary matter, the Court notes that, although plaintiff filed her motion under Fed. R. Civ. P. 12(c), she is not challenging the adequacy of the allegations but rather the validity of the claims as a matter of law. Summary judgment regarding the viability of a defense

<sup>1</sup> There are no fourteenth, fifteenth, or sixteenth affirmative defenses set forth in the answer. Dkt. # 34 at 24.

1 or counterclaim is appropriate when, viewing the facts in the light most favorable to the  
2 nonmoving party, there is no genuine issue of material fact that would preclude the entry of  
3 judgment as a matter of law. The party seeking summary dismissal “bears the initial  
4 responsibility of informing the district court of the basis for its motion” (Celotex Corp. v.  
5 Catrett, 477 U.S. 317, 323 (1986)) and identifying those portions of “the pleadings, the  
6 discovery and disclosure materials on file, and any affidavits” that show the absence of a  
7 genuine issue of material fact (Fed. R. Civ. P. 56(c)). Once the moving party has satisfied its  
8 burden, it is entitled to summary judgment if the non-moving party fails to designate “specific  
9 facts showing that there is a genuine issue for trial.” Celotex Corp., 477 U.S. at 324. “The mere  
10 existence of a scintilla of evidence in support of the non-moving party’s position is not  
11 sufficient,” and factual disputes whose resolution would not affect the outcome of the suit are  
12 irrelevant to the consideration of a motion for summary judgment. Arpin v. Santa Clara Valley  
13 Transp. Agency, 261 F.3d 912, 919 (9th Cir. 2001); Anderson v. Liberty Lobby, Inc., 477 U.S.  
14 242, 248 (1986). In other words, “summary judgment should be granted where the nonmoving  
15 party fails to offer evidence from which a reasonable jury could return a verdict in its favor.”  
16 Triton Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th Cir. 1995).

20 In response to plaintiff’s motion for dispositive relief, defendant offers his own  
21 declaration (Dkt. # 52) and a brief memorandum raising various procedural arguments (Dkt.  
22 # 53). Although defendant failed to substantively address the legal viability of any of his  
23 affirmative defenses or counterclaims, his declaration, when viewed in the light most favorable  
24 to him, provides a factual basis for some of the asserted defenses and claims

1           **A. Affirmative Defenses**

2           **First Affirmative Defense: Res Judicata/Claim Preclusion/Issue Preclusion**

3           There is no indication that plaintiff's I-864 claim was litigated or resolved in the state  
4 court divorce proceedings. Defendant has not, therefore, shown a factual or legal basis for his res  
5 judicata or preclusion defense. See In re Marriage of Khan, 182 Wn. App. 795, 803-04 (2014).

6           **Second Affirmative Defense: Impossibility/Frustration**

7           Defendant's theory of the case is that plaintiff negotiated in bad faith and intentionally  
8 breached the parties' circa 2015 agreements regarding how they would dissolve their marriage  
9 and ultimately release defendant from the financial obligations imposed by the I-864. According  
10 to defendant, the parties agreed that defendant would provide assistance to plaintiff in obtaining  
11 her United States citizenship, at which point he would no longer be bound by the I-864 and the  
12 parties would obtain a divorce, each to go their separate ways. Instead, and with the purpose of  
13 frustrating that agreement, plaintiff precipitously filed for divorce, destroying her eligibility for  
14 citizenship and forcing defendant to financially support her in perpetuity.

15           This theory is not a defense against plaintiff's claim for benefits under the I-864, but  
16 rather a counterclaim for relief for injuries arising out of plaintiff's breach of a subsequent  
17 contract or duty. Properly characterized, this claim will be permitted to proceed.

18           **Third Affirmative Defense: Statute of Limitations**

19           Plaintiff alleges that defendant's intentional conduct in July 2017 caused her emotional  
20 distress. A three year limitations period applies to this claim, and there is no evidence to support  
21 the assertion that the claim is time-barred.

22           **Fourth, Sixth, and Seventh Affirmative Defenses: Sufficiency of the Evidence**

23           Under the guise of various affirmative defenses, defendant asserts that plaintiff is unable

1 to satisfy one or more elements of her claims. A proper affirmative defense assumes that plaintiff  
2 can prevail on all elements of the claim asserted, but nevertheless provides a defense to liability  
3 on which the defendant has the burden of proof. To the extent defendant's affirmative defenses  
4 are merely rebuttal against the evidence presented by plaintiff in support of her claims, they are  
5 not proper affirmative defenses and will be stricken. Zivkovic v. S. Cal. Edison Co., 302 F.3d  
6 1080, 1088 (9th Cir. 2002).

7

8 **Fifth, Eighth, and Twenty-fifth Affirmative Defenses: Fraud and Misrepresentation**

9 The parties disagree as to whether plaintiff misrepresented facts or otherwise defrauded  
10 defendant into signing the I-864 contract and obligating himself to provide financial support in  
11 perpetuity. Defendant alleges that plaintiff misstated her interest in partnering with him and  
12 instead simply sought to gain admittance to the United States with a guaranteed source of  
13 income. A disputed issue of fact is not enough to save these defenses, however, because they are  
14 not legally viable. Defendant entered into a binding agreement with the United States for the  
15 benefit of plaintiff, a sponsored immigrant. Allegations of pre-contract impropriety on plaintiff's  
16 part do not make defendant's promises to the United States void or voidable. See Dorsaneo v.  
17 Dorsaneo, 261 F. Supp.3d 1052, 1054 (N.D. Cal. 2017) ("Permitting a sponsor to evade his  
18 support obligation by asserting a defense of fraud in the inducement is inconsistent with the  
19 purpose of the I-864 requirement, because it would place lawful permanent residents at risk of  
20 becoming dependent on the government for subsistence.").

21

22 **Ninth Affirmative Defense: Lack of Consideration**

23 Defendant acknowledged that he signed the I-864 so as not to thwart plaintiff's ability to  
24 obtain a visa and immigrate to the United States. Dkt. # 52 at 2. The fact that the bargain did not  
25 work out as he had hoped does not mean that there was no consideration for his promise of on-  
26

1 going financial support.

2           **Tenth Affirmative Defense: Equitable Estoppel**

3           Defendant alleges that plaintiff made statements and acted in such a way that he believed  
4 she intended to partner with him through life, that he reasonably relied on those acts and  
5 statements, and that he was injured once he discovered that she simply wanted admittance to the  
6 United States and a guaranteed source of income. This defense fails for the same reason as the  
7 fraud in the inducement and misrepresentation defenses fail.

8           **Eleventh and Twenty-Sixth Affirmative Defenses: Unconscionability**

9           Defendant argues that the I-864 is substantively unconscionable because it is one-sided and  
10 overly harsh. Defendant wanted the benefits of the agreement, namely plaintiff's admission to  
11 the United States, and had a choice as to whether to make the financial support guarantees the  
12 government demanded in exchange. Whatever one thinks of the policy choices behind the I-864,  
13 it is not substantively or procedurally unconscionable in the circumstances presented here.

14           **Twelfth Affirmative Defense: Violation of Public Policy**

15           Defendant has failed to identify any public policy that forbids the sort of financial  
16 guarantees at issue here.

17           **Thirteenth Affirmative Defense: Anticipatory Breach**

18           There is no allegation to support a claim that plaintiff repudiated her part of the bilateral  
19 contract of marriage prior to the time of performance.

20           **Seventeenth Affirmative Defense: Setoff or Credit**

21           Defendant asserts that he is entitled to \$10,000 from the divorce settlement and seeks to  
22 offset any amounts due plaintiff in this action. Neither the existence of the divorce settlement nor  
23 any confidentiality provision contained therein precludes a claim for a setoff.

1                   **Eighteenth Affirmative Defense: Lack of Legislative Intent/Standing**

2                   Defendant asserts that plaintiff lacks standing to enforce a contract between defendant  
3 and the United States. The I-864 makes clear, however, that the beneficiary of the contract may  
4 sue to enforce its obligations.

5                   **Nineteenth Affirmative Defense: Exceptional Circumstances**

6                   Defendant offers no facts in support or explanation of this affirmative defense.

7                   **Twentieth Affirmative Defense: Unjust Enrichment**

8                   Defendant alleges that plaintiff was unjustly enriched by his assistance in support of her  
9 citizenship application and/or by payments made in the divorce proceeding. This defense does  
10 not seek to avoid or terminate the obligations set forth in the I-864, but rather to recover for  
11 benefits provided after the I-864 was signed and which it would be unjust to allow plaintiff to  
12 keep without payment. Properly characterized as a counterclaim, this argument may proceed.

13                   **Twenty-first and Twenty-third Affirmative Defenses: Vagueness and Lack of  
14 Specificity**

15                   Defendant argues that the I-864 failed to “clearly spell out the bottom line in terms of  
16 what money he might have to pay” if the marriage did not work out. To the contrary, the form  
17 specified that financial support would have to be provided if plaintiff fell below a certain  
18 percentage of the poverty line and that the obligation continues unless and until certain, specified  
19 events occurred. Defendant has failed to identify a provision of the I-864 that is subjectively or  
20 objectively vague or lacks enough specificity to be enforced.

21                   **Twenty-second Affirmative Defense: Relief**

22                   Defendant argues that there was an accord and satisfaction and/or waiver of any  
23 outstanding obligation under the I-864 when the parties negotiated the 2015 marital agreement

1 and subsequent divorce settlement. The marital agreement states that each party “waives and  
2 forgives any claim or cause of action which each may presently have against the other by any  
3 reason . . .” Dkt. # 52-2 at 28. Nevertheless, this defense is not legally viable.  
4

5 Pursuant to the form I-864, defendant assured the United States that it could take his  
6 income into consideration when determining whether to admit plaintiff to the United States.  
7 Defendant agreed to provide plaintiff with any support necessary to maintain her income at or  
8 near the federal poverty line so that she would not become a public charge. The contract  
9 specified that the obligation to support plaintiff continued until (1) she becomes a US citizen,  
10 (2) she works for approximately ten years, (3) she is no longer a lawful permanent resident and  
11 departs the United States, (4) she obtains a new grant of adjustment of status based on a new  
12 affidavit of support, (5) she dies, or (6) the sponsor dies. Neither a negotiated settlement nor  
13 waiver are included in the list of events which terminate the support obligation. While the  
14 governing regulations permit a sponsor or sponsored immigrant to withdraw an affidavit of  
15 support (8 C.F.R. § 213a.2(f)), there is no indication that either party did so in writing or within  
16 the time allowed.  
17

18           **Twenty-fourth Affirmative Defense: Judicial Estoppel**  
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20           Defendant makes a bare accusation of inconsistent representations to two different courts.  
21 Absent some facts in support of this allegation, the defense must be dismissed.

22           **Twenty-seventh Affirmative Defense: Tortious Interference**  
23

24           “An action for tortious interference with a contractual relationship lies only against a third  
25 party. A party to the contract cannot be liable in tort for inducing its own breach.” Olympic Fish  
26 Prod., Inc. v. Lloyd, 93 Wash. 2d 596, 598 (1980). This affirmative defense fails as a matter of  
27 law.  
28

1                   **Twenty-eighth Affirmative Defense: Failure to Mitigate**

2                   Defendant asserts that he is entitled to reduce any liability he may have to plaintiff under  
3 the I-864 contract to the extent plaintiff failed to mitigate her damages by refusing to look for or  
4 maintain employment. The circumstances in which a sponsor is relieved of the I-864 support  
5 obligations are clearly specified and do not include an immigrant's willful failure to seek or  
6 maintain employment. This defense fails as a matter of law. See Li Liu v. Kell, 299 F. Supp.3d  
7 1128, 1133 (W.D. Wash. 2017).

8  
9                   **A. Counterclaims**

10                  **First and Fourth Counterclaims: Misrepresentation and Fraud**

11                  To the extent defendant is asserting that plaintiff misrepresented facts or otherwise  
12 defrauded him into signing the I-864 contract and obligating himself to provide financial support  
13 in perpetuity, the claims do not defeat the promises he made to the United States regarding the  
14 support available to plaintiff.

15                  **Second Counterclaim: Vexatious Litigation**

16                  Defendant seeks a bar order precluding plaintiff from filing any additional claims based  
17 on the I-864 support obligation in light of her negotiated waiver of all such claims. Because any  
18 such waiver is ineffective, it does not bar litigation to enforce the support obligation.

19                  **Third Counterclaim: Defamation Per Se**

20                  Defendant alleges that plaintiff has defamed him by making unfounded allegations of  
21 domestic violence in this action. Defamatory communications made by a party or counsel in the  
22 course of a judicial proceeding are generally entitled to absolute privilege because the  
23 administration of justice requires such immunity to reach the truth. See Kauzlarich v. Yarbrough,  
24 105 Wn. App. 632, 641 (2001). Because defendant has identified only statements that plaintiff  
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26  
27  
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1 was privileged to make, this counterclaim fails as a matter of law.

2           **Fifth Counterclaim: Tortious Interference**

3           This counterclaim fails for the same reason as the affirmative defense of the same name.

4 See Olympic Fish Prod., Inc. v. Lloyd, 93 Wash. 2d 596, 598 (1980).

5           **Sixth Counterclaim: Declaratory Judgment**

6           If defendant succeeds on any of his claims or defenses, he may be entitled to a declaration  
7 of his rights vis a vis plaintiff. This counterclaim may proceed.

8  
9  
10          For all of the foregoing reasons, all of defendant's affirmative defenses and counterclaims  
11 are hereby DISMISSED with the exception of his recharacterized breach of contract/breach of  
12 duty of good faith and fair dealing claim, his setoff defense, his recharacterized unjust  
13 enrichment claim, and his declaratory judgment claim.

14  
15          Although certain defenses and counterclaims have been dismissed, this action continues.  
16 In this context, leave to amend will not be blindly granted. If defendant believes he can,  
17 consistent with his Rule 11 obligations, amend the affirmative defenses and/or counterclaims to  
18 remedy the deficiencies identified above, he may file a motion to amend and attach a proposed  
19 pleading for the Court's consideration. Because the deadline for amending pleadings has passed,  
20 defendant must also justify the late amendment under Rule 16.

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22  
23          Dated this 25th day of February, 2019.

24           

25           Robert S. Lasnik  
26           United States District Judge